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ABDULLAH LIMITED COMPANY,  
BINOTECH LLC, and HIK TECH LLC

IN THE UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA

JOANNA ARDALAN, ESQ, an  
individual; ONE LLP, a California Limited  
Liability Partnership,

Plaintiffs,

vs.

BINOTECH LLC; KAREN MUMMERT;  
MICHAEL MUMMERT; ABDULLAH  
LIMITED COMPANY; CODERS CUBE  
LLC; HIK TECH LLC; DATA PATCH,  
INC.; DOE 1, d.b.a. LAW INTEGRAL,  
LLC, business entity unknown; DOE 2,  
d.b.a. DEPUTY TRADEMARK, business  
entity unknown; DOE 3, p.k.a.  
MICHELLE SPRAGUE, an individual;  
DOE 4, d.b.a. TRADEMARK INTEGRAL,  
business entity unknown; DOE 5, d.b.a.  
BRANDREGISTRATION.ORG, business  
entity unknown; and DOES 6 through 10,  
inclusive,

Defendants.

Case No. 8:23-cv-01243-KK-DFM

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION AND  
MOTION TO SET ASIDE  
DEFAULT OF DEFENDANTS'  
ABDULLAH LIMITED  
COMPANY, BINOTECH LLC,  
and HIK TECH LLC (FRCP 55(c))**  
[Doc. 50]

[Concurrently filed with Declarations  
of Abdullah Khan, and Hamza Khan]

U.S. District Judge:  
Kenly Kiya Kato  
U.S. Magistrate Judge:  
Douglas F. McCormick

Courtroom: 3  
3470 12th Street, Riverside,  
California 92501

Complaint filed: July 12, 2023  
Default taken: October 25, 2024

Hearing Date: January 9, 2025  
Time: 9:30 a.m.

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS:

**MEMORANDUM OF POINTS AND AUTHORITIES IN**  
**SUPPORT OF MOTION TO SET ASIDE DEFAULTS**

**1. OVERVIEW OF FACTS AND LAW**

Defendants are three businesses, all Pennsylvania Limited Liability Companies, identified as ABDULLAH LIMITED COMPANY, owned by Abdullah Khan, and BINOTECH LLC, and HIK TECH LLC, owned by Hamza Khan. Abdullah Khan set up ABDULLAH LIMITED COMPANY with a purpose of acquiring and then re-selling used cell phones, and to run adds on TikTok for other companies who were providing academic tutoring services, see Abdullah Khan Decl., paras. 2-3. He resides at 2172 Lucy Lane, York, PA 17404, the home of his parents. He used his parents' home address – with their consent – as the headquarters for his company. Only Abdullah Khan and his parents reside at that home; no other defendants reside at, are authorized to use, or work at the home, except for Hamza Khan, see Abdullah Khan Decl., paras. 4-5. When Abdullah Khan discovered that other persons and entities were using his home address, he filed a police report, see Exhibit “3,” to Abdullah Khan Decl.

Hamza Khan, brother of Abdullah Khan, is employed as a marketing representative for an architecture and engineering company, who hired Techdrive Pvt Ltd., to create and host a web site for each of BINOTECH LLC, and HIK TECH LLC. His business purpose was to develop a customer base for advertising which did not compete with his employer, see Hamza Khan Decl., paras. 2-4. He used his parents' home address – with their consent – as the headquarters for his company.

Neither principal was able to accomplish the business purposes. Shortly after the web sites were created for BINOTECH LLC, and HIK TECH LLC, they were hacked and control was diverted to unknown persons and entities. Access to the sites was denied to Hamza Khan. See Hamza Khan Decl., paras. 5-6. Neither principal knew or was even aware of Plaintiff until this lawsuit, see Abdullah Khan Decl.,

1 para. 4, and Hamza Khan Decl., para. 5. Hamza Khan never placed any information  
2 about her on his sites, and believes that unauthorized persons or entities took over his  
3 sites, denied him access, and now operate the sites. See Hamza Decl., paras. 5-6.

4 During the summer of 2024, each principal was sent an email, advising that  
5 their companies had been named in the above lawsuit. Seeking to clear their  
6 companies of liability, and to explain what had really occurred, they contacted  
7 Plaintiff Attorney Ardalan. She arranged and recorded a zoom conference that lasted  
8 30-40 minutes. She did not give the principals any copy of the video conference.  
9 She asked for certain documents. The principals explained that the companies had  
10 been in business only a short time and had performed virtually no business activities  
11 before their web sites were seized by unknown persons or entities. They believed  
12 they were discussing settlement with Ms. Ardalan, and that upon supplying the  
13 requested documents their companies would be dismissed from the lawsuit. All  
14 documents in their possession were supplied. See Abdullah Khan Decl., para. 6, and  
15 Hamza Khan Decl., para. 7.

16 Plaintiff later advised that she wanted documents filed in the courthouse. The  
17 principals each prepared an answer to the complaint on behalf of their respective  
18 companies and forwarded the answers to the court. They were surprised when the  
19 answers were rejected by the clerk. See Abdullah Khan Decl., para. 7, Hamza Khan  
20 Decl., para. 8. While they searched for an attorney, the clerk entered default on  
21 October 25, 2024, see Abdullah Khan Decl., para. 8, and Exhibit “1.” The proposed  
22 answer is attached as Exhibit “8.”

23 Defendants seek to have their defaults set aside and their answer filed.

24 **2. LEGAL ANALYSIS**

25 **a. Grounds for Set Aside of Default**

26 Fed. Rules of Civ. Proc. 55(c) provides: “Setting Aside a Default or a Default  
27 Judgment. The court may set aside an entry of default for good cause, and it may set  
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1 aside a final default judgment under Rule 60(b).”

2 Fed. Rules of Civ. Proc. 60(b) provides: “Grounds for Relief from a Final  
3 Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a  
4 party or its legal representative from a final judgment, order, or proceeding for the  
5 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect ...”

6 A leading case on setting aside defaults which has been cited almost 1000  
7 times for this proposition is *TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d  
8 691, 693 (9th Cir. 2001) (family dispute over the proceeds of life insurance policy,  
9 where deceased’s wife failed to timely respond to the complaint, and district court  
10 entered default judgment in favor of deceased’s mother; reversed), overruled on other  
11 grounds by *Egelhoff v. Egelhoff*, 532 U.S. 141, 147-150, 121 S. Ct. 1322 (2001). The  
12 9th Circuit Court stated in *TCI*: “We hold, in accord with the long-standing principle  
13 that default judgments are disfavored, that the district court abused its discretion in  
14 failing to set aside the default and reach the merits.”

15 The 9th Circuit Court continued in *TCI*: “Rule 60(b) is ‘remedial in nature and  
16 . . . must be liberally applied.’ *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).” And  
17 in the same paragraph: “Put another way, where there has been no merits decision,  
18 appropriate exercise of district court discretion under Rule 60(b) requires that the  
19 finality interest should give way fairly readily, to further the competing interest in  
20 reaching the merits of a dispute.” *Id.*, at 696.

21 The 9th Circuit Court identified the factors justifying set aside of default  
22 judgment as: “Those factors are: whether the defendant's culpable conduct led to the  
23 default; whether the defendant has a meritorious defense; and whether reopening the  
24 default judgment would prejudice the plaintiff.”

25 The 9th Circuit Court relied on the U.S. Supreme Court in *Pioneer Inv. Servs.*  
26 *Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d  
27 74 (1993) for the following proposition in *TCI*, supra, *Id.*, at 696-697:

1 ... the Supreme Court's recent clarification of the concept of "excusable  
2 neglect" generally. That concept, the Supreme Court has made clear, is a  
3 general equitable one, not necessarily reserved for extraordinary  
4 circumstances, and takes account of factors such as "prejudice, the length  
of the delay and impact on judicial proceedings, the reason for the delay,  
including whether it was within the reasonable control of the movant,  
and whether the movant acted in good faith." ...

5 That is, if a defendant's conduct was not "culpable," then her failure to  
6 respond to a lawsuit is ordinarily "excusable," and in the interests of  
7 substantial justice the better course may well be to vacate the default  
judgment and decide the case on the merits.

8 The 9th Circuit Court in *TCI* then explained: "the word "neglect" "encompasses  
9 simple, faultless omissions to act and, more commonly, omissions caused by  
10 carelessness." 507 U.S. at 388 ..."

11 The 9th Circuit Court in *TCI* determined there was no prejudice to plaintiff  
12 "simply because a party loses a quick victory due to an opponent's procedural default  
13 and must litigate on the merits." In the case at bar, the proposed answer being  
14 concurrently filed herewith, demonstrates Defendants have a meritorious defense.  
15 They are victims of hacking, not perpetrators of infringement.

16 In *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d  
17 922, 925 (9th Cir. 2004) (default on loan case), the 9th Circuit Court confirmed *TCI*'s  
18 holding: "The "good cause" standard that governs vacating an entry of default under  
19 Rule 55(c) is the same standard that governs vacating a default judgment under Rule  
20 60(b)."

21 In the case at bar, default was entered by the Clerk on October 25, 2024, and  
22 motion for set aside was submitted one month later. Given the requirements to meet  
23 and confer, a month should be considered quickly enough to justify set aside of  
24 default.

25 **b. Neglect as to Facts of Continuing Settlement or as to Law on**  
26 **Responding to Complaint Justify Set Aside of Default**

27 In a month after entry of default, Defendants are moving to set aside the  
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1 default. A mistake of law, that Defendants could represent themselves without  
2 counsel is sufficient to support set aside of default, see *Brien v. Kullman Industries,*  
3 *Inc.*, 71 F.3d 1073, 1077 (2d Cir. 1995) (declaratory relief action against insured on  
4 property claim, insured filed notice of removal but failed to timely answer the  
5 complaint because his attorney made mistake of law in believing that no answer was  
6 due until after removal petitioner had been “granted,” and insured’s default was  
7 entered, with set aside motion denied; reversed), holding: “In the present case, we  
8 think that Kullman presented a meritorious defense, and therefore that the district  
9 court abused its discretion in denying Kullman's motion to vacate the default  
10 judgment.” Defendants here have a meritorious defense because their websites were  
11 hacked, and unknown persons and/or entities falsely gave out the home address of  
12 Abdullah Khan as their place of doing business, thereby misleading Plaintiff.

13 A mistake of fact, where Defendants believed that settlement discussions were  
14 continuing can support set aside of default. See *Whitman v. United States Lines, Inc.*,  
15 88 FRD 528, 530 (E.D. Tex. 1980) (court set aside default judgment under FRCP  
16 55(c) in personal injury case), with the district court observing: “The Defendant  
17 asserts that the entry of default was due to its excusable neglect, i. e., due to its good  
18 faith belief that settlement negotiations were proceeding and that the dispute could be  
19 resolved without resort to the courts.”

20 Applying the facts in our case, Defendants’ principals reasonably believed that  
21 they were involved in settlement discussions with Plaintiff. When she requested they  
22 respond to the complaint, they did so, unaware that limited liability companies cannot  
23 appear in pro per, but must be represented by counsel. Then they searched for an  
24 attorney, but in the meantime, Plaintiff caused their default to be entered.

### 25 **3. CONCLUSIONS**

26 Defendants’ culpable conduct did not lead to entry of default, since their  
27 negligence, if any, was excusable based on continuing settlement discussions and  
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1 being unaware that an attorney had to represent limited liability companies in court  
2 actions. Defendants have a meritorious defense, because unknown persons or entities  
3 hacked their websites, seized control of the sites to the exclusion of Hamza Khan and  
4 misrepresented their business address as Abdullah Khan's home. And, reopening the  
5 default will not prejudice Plaintiff since a delay of a month caused by mistake is not  
6 prejudicial in favor of resolution on the merits.

7 Wherefore, Defendants pray that the motion for set aside be granted, that their  
8 concurrently submitted Answer be filed, and for such further proper relief.

9 Respectfully submitted,

10 FLYER & FLYER, A PROFESSIONAL  
11 LAW CORPORATION

12 Dated: November 25, 2024

By: /s/ David R. Flyer

13 David R. Flyer  
14 Raquel Flyer Dachner  
15 Attorneys for Defendants  
16 ABDULLAH LIMITED COMPANY,  
17 BINOTECH LLC, and HIK TECH LLC  
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